

REMARKS

Claims 1-32 were originally presented in the subject application. Claims 33-38 were added in a Preliminary Amendment dated July 9, 2004, and claims 1, 7, 14, 19 and 27 were amended in a Supplemental Preliminary Amendment dated August 9, 2004. Claims 1, 14, 27, 33, 35 and 37 have hereinabove been further amended to more particularly point out and distinctly claim the subject invention. No claims have herein been canceled or added. Therefore, claims 1-38 remain in this case.

The addition of new matter has been scrupulously avoided. In that regard, support for the common amendment to claims 1, 14 and 27 can be found in the specification at, for example, numbered paragraph 0032. In addition, support for the common amendment to claims 33, 35 and 37 can be found in the specification at, for example, numbered paragraph 0033.

Applicants respectfully request reconsideration and withdrawal of the various grounds of rejection.

35 U.S.C. §112 Rejection

The Office Action rejected claims 1-38 under 35 U.S.C. §112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Applicants respectfully, but most strenuously, traverse this rejection as it relates to the amended claims.

With regard to independent claims 1, 14 and 27, the Office Action alleged that it was unclear what the first and second dimensions referred to. The Examiner is correct in assuming the first and second dimensions are not the same. As an example, the first dimension could be a width of the bioproduct container for the unit, and the second dimension could be a depth of the container for the larger-scale unit. Thus, the claim

language refers to different dimensions, and not different measurements for the same dimension of different containers.

With regard to claims 33, 35 and 37, the Office Action also questioned whether the recited thickness refers to the thickness of the container material, or the depth of the container. Although the word "depth" is not used, it is clear from numbered paragraph 0033 of the specification that the recited thickness refers to a cross-section or "slice" of the larger container; in other words, the depth of the container. Thus, Applicants have amended the noted claims to recite "depth," rather than "thickness." As amended, Applicants submit that claims 33, 35 and 37 overcome the stated rejection.

#### 35 U.S.C. §102 Rejection

The Office Action rejected claims 1-5, 7-10, 12-16, 19, 21, 22, 24-38 under 35 U.S.C. §102(b), as allegedly anticipated by Bender et al. (U.S. Patent No. 3,586,097). Applicants respectfully, but most strenuously, traverse this rejection as applied to the amended claims.

With respect to the anticipation rejection, it is well settled that a claimed invention is not anticipated unless a single prior art reference discloses: (1) all the same elements of the claimed invention; (2) found in the same situation as the claimed invention; (3) united in the same way as the claimed invention; (4) in order to perform the identical function of the claimed invention. In this instance, Bender et al. fails to disclose at least one element of each of the independent claims and as a result does not anticipate, or even render obvious, applicants' invention.

As amended, claim 1 recites, for example, that at least one of (a) a spacing of the at least two opposite surfaces and (b) a first dimension of the bioproduct container for the unit, proportionally corresponds to a second dimension of a bioproduct container for a larger-scale unit, and wherein the first dimension and the second dimension are different dimensions.

Against this aspect of claim 1, the Office Action cites to FIG. 5 and the transfer pipes (element 51) of Bender et al. FIG. 5 of Bender et al. shows a cross-section of the cassette (holder for specimen bag) from FIG. 4, which goes into one of the freezing tank or the thawing tank (18, 19). As shown in FIG. 3, coils 51 surround holding tank 17, which is sized larger than tanks 18, 19 and is not intended to be used with a cassette. However, there is no disclosure in Bender et al. regarding a larger-scale unit, let alone a container therefore with any dimension proportional to a different dimension of the original.

Applicants submit it is not enough to simply cite a container and allege there *could be* another that is proportional in some respect. The invention purposely sizes at a small scale to be proportional to the large scale. This provides, for example, information at the smaller scale that can be used instead of, or in planning for, use at the larger scale.

The Office Action indicated that the "proportionally corresponds" limitation was given no patentable weight, since no number is ascribed to it in the claim. For purposes of the invention, however, it does not matter whether the proportion is 2:1, for example, only that at least one of the claimed spacing and the first dimension does in fact proportionally correspond to a dimension of a bioproduct container for a larger-scale unit. In one example in the specification, an indication of the freezing characteristics for a particular bioproduct on a large scale is given by testing on small scale using a bioproduct container, the width of which is sized to essentially mimic a front-to-back slice from the larger-scale unit. In one example, the proportion is about 1:1 for the larger-scale slice and the smaller scale container. Giving no patentable weight to this limitation effectively ignores an aspect of the invention.

The Office Action also alleged that meat or vegetables could satisfy the bioproduct limitation. However, set forth in numbered paragraph 0003 of the present application is a description of what is meant by the term "bioproduct." More specifically, a "bioproduct" comprises biopharmaceuticals and biologics. Examples given include proteins, cells, antibodies, medicines, plasma, blood, biological buffer solutions, cell culture media, viruses, serum, cell fragments and cellular components.

Therefore, Applicants submit that Bender et al. cannot anticipate, or even render obvious, claim 1.

Independent claims 14 and 27 contain limitations similar to those argued above with respect to claim 1. Thus, the remarks made above with respect to claim 1 are equally applicable to claims 14 and 27. Therefore, Applicants submit that claims 14 and 27 also cannot be anticipated by or made obvious over Bender et al.

Applicants submit that the dependent claims are allowable for the same reasons as the independent claims from which they directly or ultimately depend, as well as for their additional limitations.

For example, claim 5 recites at least two clamping arrays coupled to the unit for holding a plurality of bioproduct containers. Applicants submit there are no clamps in Bender et al., let alone at least two arrays of them. In fact, on page 4 of the Office Action, within the text of the obviousness rejection, the Office Action admits that Bender et al. does not disclose clamps.

Therefore, Applicants submit that claim 5 cannot be anticipated by Bender et al.

#### 35 U.S.C. §103 Rejection

The Office Action rejected claims 6, 11, 17, 18, 20 and 23 under 35 U.S.C. §103(a), as being obvious over Bender in view of Lavender (U.S. Patent No. 4,565,073). Applicants respectfully, but most strenuously, traverse this rejection.

Claim 6 recites, for example, that the at least two clamping arrays are coupled to the at least two opposite surfaces of the unit.

Against this aspect of claim 6, the Office Action cites to Lavender at FIGs. 5 and 6. However, as shown in FIG. 1 of Lavender, the frame therein has a single row of screws for compressing the plasma bags. The claim recites at least two clamping arrays coupled to the

at least two opposite surfaces of the unit. Applicants submit there is no teaching or suggestion of at least two clamping arrays as claimed.

Therefore, Applicants submit that claim 6 cannot be rendered obvious over Bender in view of Lavender.

The remarks made above regarding claim 6 are also applicable claims 17 and 18.

Claim 11 recites that the at least one of the at least one divider is removable.

Against claim 11, the Office Action cites to the dividers of Lavender. However, the Office Action points to no section of Lavender teaching or suggesting *removable* dividers.

Therefore, Applicants submit that claim 11 cannot be rendered obvious over Bender in view of Lavender.

The remarks made above regarding claim 11 are also applicable claim 23.

Claim 20 recites that the at least one container is integral with the unit.

The Office Action does not specifically address claim 20. However, Applicants submit that there is no teaching or suggestion in Bender, Lavender, or their combination, of a bioproduct container integral with the unit.

Therefore, Applicants submit that claim 20 cannot be rendered obvious over Bender in view of Lavender.

### CONCLUSION

Applicants submit that the dependent claims not specifically addressed herein are allowable for the same reasons as the independent claims from which they directly or ultimately depend, as well as for their additional limitations.

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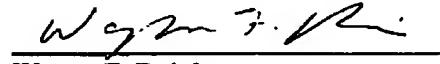
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Applicants acknowledge the references cited in the Office Action, but not substantively applied. However, Applicants submit that the pending claims are patentable thereover as well.

For all the above reasons, Applicants maintain that the claims of the subject application define patentable subject matter and earnestly request allowance of claims 1-38.

If a telephone conference would be of assistance in advancing prosecution of the subject application, Applicants' undersigned attorney invites the Examiner to telephone him at the number provided.

Respectfully submitted,

  
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